

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

WING JOE,
Plaintiff,

VS.

COLONY SPECIALTY INSURANCE
COMPANY,
Defendants.

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CIVIL ACTION NO. ____

DEFENDANT COLONY INSURANCE COMPANY'S NOTICE OF REMOVAL

Colony Insurance Company, misnamed in Plaintiff's Original Petition as "Colony Specialty Insurance Company," files this Notice of Removal pursuant to 28 U.S.C. Sections 1332, 1441, 1446, and Local Rule 81, and in support shows as follows:

INTRODUCTION

On July 14, 2015, Plaintiff Wing Joe filed its Original Petition against Colony Specialty Insurance Company¹ in the 430th Judicial District Court of Hidalgo County, Texas in Cause No. C-2989-15-J (the State Court Action).² Wing Joe's lawsuit relates to insurance coverage for commercial property damage from wind or hail arising out of two separate storms on March 29, 2012, and April 20, 2012. Wing Joe sued Colony for amounts in excess of \$75,000 for breach of contract, bad faith, negligence, gross negligence, violations of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practice Act.

A true and correct copy of all process, pleadings, and all orders filed and served in the State Court Action are hereby filed with this Notice of Removal as required by 28 U.S.C. Section

¹ Wing Joe misnamed and incorrectly sued Colony Specialty Insurance Company rather than Colony Insurance Company, two distinct entities.

² Exhibit C-1.

1446(a). Moreover, pursuant to Southern District of Texas Local Rule 81 and Federal Rule of Civil Procedure 7.1, copies of the following documents are provided to the clerk for filing:

- (1) An index of matters being filed (Exhibit A)
- (2) All executed process in this case (Exhibit B);
- (2) Pleadings asserting causes of action:
 - Exhibit C-1 – Plaintiff’s Original Petition
 - Exhibit C-2 – Colony’s Answer
- (3) All orders signed by the state judge (none);
- (4) The docket sheet (Exhibit D);
- (5) A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit E);
- (6) Certificate of Interested Parties (Exhibit F).

BASIS FOR REMOVAL

1. Colony files this Notice of Removal pursuant to 28 U.S.C. Section 1441(b), which permits removal based on diversity jurisdiction. A federal court can exercise diversity jurisdiction if: (1) there is complete diversity among the parties; and (2) the amount in controversy exceeds \$75,000.³

2. Colony Insurance Company is a citizen and resident of the state of Virginia for diversity purposes.⁴ Although Wing Joe references Colony Specialty, rather than Colony, in its Original Petition, it admits that Colony Specialty is an Ohio corporation and that Wing Joe is a Texas resident.⁵ Based on both the face of Wing Joe’s allegations and the actual citizenship of either entity, there is complete diversity among the parties under 28 U.S.C. Section 1441(b).

³28 U.S.C. § 1332(a).

⁴ See *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5th Cir. 1993).

⁵ Exhibit C-1, at ¶¶ 2-3.

3. The amount in controversy in this case exceeds \$75,000.00. Colony satisfies its burden of meeting the amount-in-controversy requirement if it is facially apparent that Plaintiff's claims exceed the jurisdictional amount.⁶ Wing Joe has asserted \$640,226.38 in actual damages in its Original Petition,⁷ which meets the \$75,000.00 minimum requirement.

4. Wing Joe filed its Original Petition on July 14, 2015, but did not serve Colony until August 18, 2015.⁸ Colony served its Answer on September 8, 2015.⁹ This Notice of Removal is timely because it is filed within 30 days after Wing Joe served Colony.

5. Under 28 U.S.C. Section 1441(a), venue of the removed action is proper in the United States District Court for the Southern of Texas, McAllen Division, as the district and division embracing the county in which the State Court Action is now pending.

CONCLUSION

For the reasons stated in this Notice, this Court may exercise diversity jurisdiction over this lawsuit. Defendant Colony Insurance Company, as the removing party, will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. Section 1446(d). Colony will promptly file a copy of this Notice of Removal with the Clerk of the 430th Judicial District Court of Hidalgo County, Texas, where the State Court Action is currently pending.

WHEREFORE, Colony Insurance Company respectfully removes this case from the 430th Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division.

⁶See *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

⁷Exhibit C-1, at ¶ 9.

⁸Exhibit B.

⁹Exhibit C-2.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

By: /s/ David D. Disiere

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ATTORNEY FOR COLONY
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document was electronically filed on September 16, 2015. Notice of this filing will be sent to all parties via operation of the Court's electronic filing system. For those parties whose counsel is not registered with the Court's electronic filing system, service will be made by facsimile, hand delivery, or via certified mail, return receipt requested.

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/s/ David D. Disiere

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